As to the exact amount of extractable sand on the land we were very impressed with the approach taken by an obvious expert in the field Mr. J. Constant who was called by the appellant. His figure of 1.975 million cubic yards however, we found difficulty in accepting because it did not take into account the possible resiting of the protected tenants on the fringes and a 50 yard statutory quarrying limit. He proceeds on the basis that all the ground tenants can be cleared. There is no evidence of this being legally or practically feasible. Even if possible, the costs would probably be exorbitant, finally making the same dent to the prospective profits and resultant valuation.

In any event, the figure is not in consonance with another report by appellant's consultants, Maunsell, which puts the amount of sand at 1.775 million cubic yards. We accept that the figure used by Mr. Loy the respondent's geologist i.e. 1.637 million cubic yards of sand is probably more accurate but as we are dealing with estimates, we think a figure of 1.7 million cubic yards would not be inaccurate. We think that this figure should be reduced by 100,000 cubic yards for the resited tenants and the 50 yard statutory boundary. This would leave in our view 1.6 million cubic yards of extractable sand.

On the basis of 70 cents per cubic yard as the profit, this would yield an annual profit of $105,000 based on a production of 150,000 cubic yards per year. Both sides seem to agree that a multiplier is necessary to determine the value of the whole land. The respondent, using a life span of 10½ years at 6½% interest determines the multiplier as 7.623. The appellant's multiplier is based on 13 years' life span to extract a higher quantity of sand which they contend is extractable. The figure is also different for the reason that the appellant's valuer has used the escalating cost basis. Having accepted the lower figure of extractable sand and having rejected the escalating basis of valuation, we accept that the respondent's multiplier is correct.

This calculation results in a valuation of the sand bearing potential at $800,467 made up as follows:—

150,000 cu. yds. x .70 cents x 7.6235 = $800,467
or 34.631 cents per sq. ft.

Adding to the above, the agreed residual value brings the value per square foot to 54.631 cents.

On the cost of clearing and resiting the persons on the land, the figure of $200,000 is probably sufficient. The figure of $270,000 as contended by the respondent is in our view on the high side and the figure of $145,000 as contended by the appellant is on the low side. This would reduce the above figure of 54.631 cents by 8.653 cents per sq. ft. leaving a valuation of 45.978 cents per sq. ft.

In our view, it would not be correct to leave this figure as correctly reflective of the land value in 1971 as it would not have taken into account a valuable element of potential growth which any willing buyer and seller would, in our view, take into account in determining the value of the land on that date. Whether such hypothetical buyer was going to work it himself or otherwise would in our view feature in both their minds in a hypothetical sale and purchase.

As this acquisition took place in 1971 before the 1973 amendments which by statute exclude the potential growth factor, this factor can and indeed ought to be taken into account. The very fact that there was sand on the land, which would presumably increase in value, allows for this element to be taken into consideration. The fact that it would become a "narrow" marketable item in the late seventies since H.D.B., the largest single consumer quarries its own sand, would not, in our view, be a basis for pessimism in 1971.

Taking into account all the relevant factors and giving the best consideration that we can to the evidence and submissions in this case we think that an added value of 9 cents per sq. ft. for the potential element would be reasonable. This places a final figure of 55 cents per sq. ft. for the acquired land which in our view is a realistic value as at June 9, 1971 and we accordingly award to the appellant the sum of $1,271,271.65.

The appellant is entitled to interest at 6% per annum from the date the Collector took possession of the appellant's property i.e. from August 14, 1972. This interest is payable on the sum of $793,704.65 which is the difference between the amount awarded by the Collector and the amount awarded by this Board.

As the amount claimed by the appellant exceeds by more than 20% the amount awarded by the Board there shall be no order regarding costs, under section 32(4) of the Land Acquisition Act.

Appeal allowed.

Solicitors: *Hilborne & Co.*

LOKE HONG KEE (S) PTE LTD. v. UNITED OVERSEAS LAND LTD.

[O.C.J. (D'Cotta J.) September 8, 1978]
[Singapore — Case Stated No. 1 of 1978]

Arbitration — Case stated — Supplemental agreement — Whether connected with and to be read with principal agreement — Whether provision for arbitration in principal agreement could apply to disputes under supplemental agreement — Whether delay of nominated sub-contractor could be taken into consideration — Amendment of pleadings — Certificate issued by architect after commencement of arbitration proceedings — Whether binding — Extension of time not claimed at appropriate time — Whether arbitrator could grant reasonable extension.

In this case the claimants had by agreement in writing (the principal agreement) undertaken to complete two blocks of flats under the supervision and to the satisfaction of the respondent's architects. By a subsequent supplemental agreement an extension of time was given for the completion of the two blocks of flats. Disputes having arisen between the parties in regard to the progress of the works, the matter was referred to arbitration. The arbitrator agreed with the consent of the parties to state a case to the High Court on points of law. The questions submitted for the consideration of the court by the respondents were —

(1) Whether the arbitrator could open up, review or revise the opinion of the architect under the supplemental agreement pursuant to powers conferred on the architect by the principal agreement.

(2) Whether for the purposes of the supplemental agreement it was sufficient that the architect should have formed an

opinion in good faith on the information available at the time.

(3) Whether the valuation of the works under the supplemental agreement could be opened up, reviewed and revised.

(4) Whether delay on the part of the nominated sub-contractors could be taken into consideration by the arbitrator in determining whether or not the claimants had made satisfactory progress.

(5) Whether the arbitrator was entitled to open up, review or revise the extensions of time already granted in respect of causes arising before the date of the supplemental agreement.

The claimants asked three questions to be referred to the court —

B(1)(a) whether the claimants were entitled to adduce certain evidence without amendment of pleadings;

(b) if not, whether an amendment should in all the circumstances be allowed.

B(2) whether a certificate given by the architect after the commencement of the arbitration proceedings had binding effect and whether it could be opened up, reviewed or revised by the arbitrator;

B(3) whether the claimants were precluded from asking for reasonable extension of time by virtue of their failure to claim for an extension of time at the appropriate time.

Held: (1) the supplemental agreement in this case was connected with the principal agreement and must be read conjunctively with the principal agreement. Since the respondents had determined the claimant's employment under the principal agreement (for alleged unsatisfactory progress under the supplemental agreement) it must follow that the dispute over the determination must necessarily be a dispute under the principal agreement and such being the case Clause 34 of the principal agreement provided for disputes or differences between the parties to be dealt with by arbitration. The answer to questions (1), (3) and (5) must therefore be in the affirmative;

(2) question No. (2) need not be answered as it only arose if question No. (1) was answered in the negative;

(3) the effect of Clause 23 of the principal agreement was to exclude the contractor from all liability in respect of unavoidable delay caused by the nominated sub-contractors work and therefore the arbitrator was entitled to take into consideration any delay on the part of the nominated contractors. The answer to question No. (4) must therefore be in the affirmative;

(4) leave to amend is usually given though with caution to enable the real question in controversy between the parties to be determined. The answer to both parts of the claimant's first question should be in the affirmative;

(5) once a dispute had arisen and been referred to arbitration it was not open to the architect to give further certificates. The certificate issued after the commencement of the arbitration proceedings was therefore not binding and could be opened up, reviewed or revised by the arbitrator;

(6) failure on the part of the claimants to claim extension of time at the appropriate time does not prevent the arbitrator from granting such reasonable extension under Clause 23 of the Principal agreement. The answer to the claimant's third question must therefore be in the negative.

Cases referred to:-

(1) *Gibraltar* v. *Kenney & Anor.* [1956] 3 All E.R. 26.
(2) *Heyman* v. *Darwins Ltd.* [1942] 1 All E.R. 337.
(3) *Astro Vencedor Compania Naviera S.A. of Panama* v. *Mabanaft* [1971] 2 Q.B. 588.
(4) *Robins* v. *Goddard* [1905] 1 K.B. 301.
(5) *Westminster Corporation* v. *J. Jarvis & Sons Ltd.* [1970] 1 W.L.R. 637.
(6) *G.L. Baker Ltd.* v. *Medway Building and Supplies Ltd.* [1958] 1 W.L.R. 1216.
(7) *Cropper* v. *Smith* (1884) 26 Ch. D. 710.
(8) *Tildesley* v. *Harper* 10 Ch. D. 396.
(9) *Lloyd Brothers* v. *Milward, Hudson's* Building Contracts 4th Ed. Vol. 2 p. 262.
(10) *Prestige* v. *Brettell* [1938] 4 All E.R. 346.
(11) *Brodie* v. *Cardiff Corporation* [1919] A.C. 337.

CASE STATED.

C.S. Wu for the claimants.

Patrick Garland Q.C. (*Winston Chen* with him) for the respondents.

Cur. Adv. Vult.

D'Cotta J.: By an Agreement in writing dated April 8, 1974 (hereinafter called "the principal agreement") made between Loke Hong Kee (S) Pte Ltd. (hereinafter called "the claimants") and United Overseas Land Limited (hereinafter called "the respondents"), the claimants undertook to complete the erection of two blocks of flats known as Cairnhill Plaza (hereinafter called "the works") under the supervision and to the satisfaction of the respondents' architects.

On March 23, 1976, the same parties entered into another agreement (hereinafter called "the supplemental agreement") which provided, *inter alia,* for the extension of time for the completion of the said works as follows:—

(a) in respect of Block 1 up to April 30, 1977
(b) in respect of Block 2 up to 30th October 1977.

On March 1, 1977, the architect pursuant to the provisions of Article IV Clause 3 of the supplemental agreement informed the respondents that the progress of the works was unsatisfactory and that they could determine the employment of the claimants under the principal agreement. By a letter of the same date the respondents determined the claimants employment under the principal agreement. Disputes or differences have arisen between the parties and they have been referred to the arbitrator. The arbitrator, before proceeding with the arbitration, with the consent of the parties agreed to state a case to the High Court on points of law; the respondents have requested the arbitrator to submit five questions for the consideration of the court and the claimants three questions.

The first question submitted by the respondents is:

"Whether the Arbitrator is entitled to open up, review or revise an opinion of the Architect under Article V Clause 3 of the Supplemental Agreement pursuant to the powers conferred upon the Architect by Clause 34 of the Principal Agreement."

The point for consideration in connection with this question is whether the supplemental agreement is connected with the principal agreement.

Counsel for the respondents contend that the supplemental agreement is distinct and separate from the principal agreement with independent provisions that "cut across", "replace" and "add to" to the provisions of the principal agreement, and hence the arbitration clause in the principal agreement has no application whatever to the provisions of the supplemental agreement. Counsel for the claimants contend that the two agreements are connected. The claimants employment arises under the principal agreement and not under the supplemental agreement.

The parties to the supplemental agreement are the same parties to the principal agreement, and the subject matter is the same i.e. it is in respect of the erection of the two blocks of flats and known as Cairnhill Plaza and referred to in the principal agreement as "the said works". The various articles of the supplemental agreement provide for settlement of the dispute which had arisen between the parties under the principal agreement — they deal:—

(a) with payment of nominated sub-contractors in respect of the work performed under the principal agreement;

(b) with the purchase of materials for the carrying out of the works under the principal agreement;

(c) with the measurement and payment of reinforcement steel bars for use in the works under the principal agreement;

(d) with the progress and completion of the works and respondents' rights of termination in respect of claimants' employment under the principal agreement;

(e) with the provisions of security by claimants in respect of their works under the principal agreement;

(f) with the respondents' indemnity rights in respect of the works performed under the principal agreement and it clarifies the rights and liabilities of the parties as provided under the principal agreement.

There is not a single matter dealt with in the supplemental agreement that is not directly connected with the principal agreement.

Article V Clause 3 of the supplemental agreement gives the respondents the right to determine the claimants employment on the occurrence of the following events:—

(1) if the progress of the said works are in the opinion of the architect unsatisfactory; the "said works" obviously refer to works in the principal agreement;

(2) failure to adhere or maintain the progress of works as specified in the Third Schedule of the supplemental agreement; and

(3) upon any breach of the supplemental agreement.

The architect then recommends in writing and in addition to the respondents' rights under the principal agreement the respondents shall be at liberty to determine the employment of the claimants. The respondents exercised their rights of termination in Exhibit AB63.

The meaning of the word "supplemental" in the *Oxford Dictionary* is as follows:— "thing added to supply deficiencies, amplify previous account"

It is quite obvious that a supplemental agreement is to provide for any omissions that exist in the principal agreement and in this particular case to make provisions for exigencies which had arisen since the making of the principal agreement and the manner in which these exigencies should be met or dealt with.

The provisions of the supplemental agreement would be incomprehensible unless read in conjunction with the principal agreement. In my view the supplemental agreement is connected with the principal agreement and it must be read conjunctively with the principal agreement. Since the developers had determined the claimants' employment under the principal agreement, it must follow that the dispute over the determination must necessarily be a dispute under the principal agreement and such being the case Clause 34 of the principal agreement provides for disputes or differences between the parties to be dealt with by arbitration. Under Clause 34(1) the arbitrator has jurisdiction to deal with *"any dispute or difference" between the parties "as to the construction of this contract or as to any matter or thing of whatever nature arising thereunder or in connection therewith" including inter alia "the rights and liabilities of the parties under Clause 25 of the Principal Agreement."*

The abovementioned italicized words must be given a wide interpretation. Dealing with the construction of such a clause, Sellers J. in Government of *Gibraltar* v. *Kenney & Anor.*[1] said:—

"The distinction between matters 'arising out of' and 'under' the agreement is referred to in most of the speeches in *Heyman* v. *Darwins Ltd.*[2] and it is quite clear that 'arising out of' is very much wider than 'under' the agreement. This clause incorporates a difference or dispute in relation to any thing or matter 'arising out of' as well as 'under' the agreement, and, in my view, everything which is claimed here in this arbitration can be said to be a dispute or difference in relation to something 'arising out of' the agreement."

In *Astro Vencedor Compania Naviera S.A. of Panama* v. *Mabanaft,*[3] Denning M.R. in the Court of Appeal affirming the words of Mocatta J. in the court below said:—

"If the claim or the issue has a sufficiently close connection with the claim under the contract, then it comes within the arbitration clause."

Hudson's on Building and Engineering Contracts 9th Edition pages 328-354 has this to say of Clause 35 of the Rules of the Institute of British Architects which is *in pari materia* to our Clause 34 of the Principal Agreement and I quote:—

"This arbitration clause enables the merits of virtually any matter of dispute (other than the extremely rare case of an allegation of mistake or perhaps misrepresentation affecting the formation of the contract, and the rather more common case of an application for rectification of the contract) to be dealt with by the arbitrator."

Clause 34(3) of the principal agreement gives the arbitrator the power "to open up, review or revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no certificate, opinion, decision, requirement or notice had been given".

In view of the above, the answer to this first question posed by the arbitrator must surely be in the affirmative. Consequent upon my judgment as regards the answer to Question 1, it must follow that the answers to Questions 3 and 5 of the respondents questions that is—

"Q3. Whether or not by virtue of the powers conferred upon me as Arbitrator under Clause 34 of the Main Contract, I am entitled to direct that the Claimants' claims under paragraphs 4 and 4A in their Points of Claim be measured and/or valued as may in my opinion be desirable in order to determine the rights of the parties and/or to open up, review or revise the valuation of the Works executed and materials sup-

plied by the Claimants and carried out by Pakatan purportedly pursuant to the provisions of Article V Clause 6 of the Supplemental Agreement.

Q5. Whether on the true construction of the Supplemental Agreement I am entitled to open up review or revise the extension of time already granted (to 4th May 1976) in respect of causes arising and/or occurring and/or known to the Claimants and/or arising from instructions given before the date of the Supplemental Agreement."

must also be answered in the affirmative. This definitely comes within the scope of the arbitrator's jurisdiction provided for by Clause 34(3). Although article 5 Clause 6 of the supplemental agreement states that the valuation of the quantity surveyor shall be binding on both parties and final, in my view Clause 34(3) of the principal agreement is sufficiently wide to embrace Clause 6 of the supplemental agreement — see *Halsbury's* 4th Edition, para. 1215 and *Robins* v. *Goddard*[4] where Collins M.R. in his judgment at page 301 had this to say: —

"If something which purports to be conclusive is made subject to revision it loses its quality of finality."

Having disposed of Questions 1, 3 and 5, we now turn to Questions 2 and 4.

Question 2 of the respondents questions is as follows:—

Q2. Whether for the purposes of Article V Clause 3 of the Supplemental Agreement and the recommendation of the Architect given in pursuant thereto it is sufficient that the Architect should have formed an opinion in good faith on the information available to him at the time."

This question only arises if Question 1 is answered in the negative. Needless to add it was not.

"Q4. In determining whether or not the Claimants have failed —

(i) to adhere to the progress of works specified in the schedules to the Supplemental Agreement, and/or

(ii) to carry out the works expeditiously and with every diligence, and/or

(iii) to make satisfactory progress (pursuant to Article V Clauses 1, 2 and 3 of the Supplemental Agreement),

I am entitled to take into consideration any delay on the part of nominated subcontractors (other than any such delay which may be shown to have been caused by any breach of contract on the part of the Respondents)."

Clause 23 of the Principal Agreement sets out the conditions under which the contractor would be entitled to an extension of time — paragraph (g) in particular. The effect of this provision is to exclude the contractor from all liability in respect of unavoidable delay caused by the nominated sub-contractors' work. Evidence relating to excuses of delay or to description of the progress of the works resulting in the contractors claiming for extension of time is relevant and admissible to enable the arbitrator to compute the question of time extension. In *Westminster Corporation* v. *J. Jarvis & Sons Ltd.*,[5] Lord Hodson had this to say: —

"I agree with the contention that delay relates to the time when performance is due. From the contractors' point of view it matters not why the work has not been done on time. Dilatoriness is not in itself relevant."

In my view, the arbitrator is entitled to take into consideration any delay on the part of the nominated sub-contractors.

We now come to the claimants' questions.

"QB1. (a) Whether the Claimants are entitled to adduce evidence without amendment of the pleadings to establish that the dates for the issue of drawings recorded in the schedules attached to the respondents' letter to the Claimants of the 1st April 1976 had been agreed as alleged by the Claimants.

(b) In the event of the preceding question being answered in the negative then whether in all circumstances an amendment to allege such foregoing agreement should be allowed."

The general principles followed by the courts when dealing with applications to amend pleadings are set out in the *Supreme Court Practice* Volume 1 page 340. Generally speaking leave is given though with caution, to determine the real question in controversy between the parties. Jenkins L.J. in *G.L. Baker Ltd.* v. *Medway Building & Supplies Ltd.*[6] had this to say: —

"It is a guiding principle of cardinal importance on the question of amendment that generally speaking all such amendments ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings."

Bowen L.J. in *Cropper* v. *Smith*[7] said: —

"It is a well established principle that the object of the court is to decide the rights of the parties and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights."

Bramwell L.J. in *Tildesley* v. *Harper*[8] said: —

"My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide, or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise."

The answer to both parts of this question is in the affirmative.

The claimants' 2nd question is as follows:—

"QB2. Whether William Chen's certification that in his opinion the works as defined by the Building Contract ought reasonably to have been completed by the Claimants on the 4th May 1976 contained in his letter to the Claimants of the 18th of July 1977 —

(a) has binding effect; and

(b) subject to opening up, review or revision by me pursuant to the powers conferred on me under Clause 34 of the Main Contract."

Mr. Chen's certificate was issued under Clause 22 of the Principal Agreement on July 18, 1977. Arbitration proceedings commenced on March 2, 1977. In *Lloyd Brothers* v. *Milward*[9] unreported but illustrated in *Hudson's* 4th Edition, Vol. 2 page 262, the Court of Appeal held that once a dispute had arisen it was not open to the architect to give further certificates. The merits of this Certificate are being disputed by the claimants: hence the arbitrator by virtue of the powers conferred on him by Clause 34(3) of the principal agreement has the power to open up, review or revise. It follows that the answer to (a) *supra* must be in the negative and (b) in the affirmative.

"QB3. Whether the Claimants are precluded from relying on paragraph 3 of their Points of Reply and Defence to Counterclaim by virtue of their failure to claim for an extension of time at the appropriate time or times."

Failure on the part of the claimants to claim extension of time at the appropriate time does not prevent the arbitrator from granting such reasonable extension under the provisions of Clause 23 — *Halsbury's* 4th Edition page 606.

Wallace on Building and Civil Engineering Standard Forms at page 106 describes this failure to be nothing more than a technical breach of contract by the contractor.

Slesser L.J. in *Prestige* v. *Brettell*,[10] page 346 had this to say: —

"I read the case of *Brodie* v. *Cardiff Corporation*[11] where this matter was fully considered, in substance to mean this. Where an arbitrator having jurisdiction has to decide that something ought to have been done by the architect or engineer which was not done, if the terms of reference are wide enough to enable him to deal with the matter he may by that decision himself supply the deficiency, and do that which ought to have been done."

— see also in this connection *Hudson's* Building and Engineering Contracts, 10th Edition, 437.

Finally in view of the aforementioned authorities in my view the claimants' failure to serve notice under Clause 23 does not in law amount to a waiver of their rights under that clause.

The answer to this question is in the negative.

In answering the aforementioned questions I have confined myself only to the points of law on which guidance was sought and I have refrained from taking into consideration certain facts pertaining to these questions in arriving at my conclusions although the submissions did where necessary refer to such facts as these matters are for determination by the arbitrator.

Questions answered.

Solicitors: *Donaldson & Burkinshaw; Shook Lin & Bok.*

MALAYSIAN REPORTS

PUBLIC PROSECUTOR v. OOI KHAI CHIN & ANOR.

[F.C. (Suffian L.P., Gill C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Raja Azlan Shah and Wan Suleiman F.J.J.) May 15 and August 19, 1978]

[Kuala Lumpur — Federal Court Criminal Appeal No. 39 of 1977]

Criminal Law and Procedure — Appeal — Appeal from acquittal by jury — Summing-up of trial judge — Credibility of witnesses — Appeal dismissed — Criminal Procedure Code (F.M.S. Cap. 6) s. 229 — Courts of Judicature Act, 1964, s. 50 — Federal Constitution, art. 7(2).

Precedent — Former decision of Federal Court not followed — Earlier decision given in error — Courts of Judicature Act, 1964, s. 50.

Constitutional Law — Appeals against acquittal — Federal Constitution, art. 7(2).

In this case the respondents had been charged for an offence under the Dangerous Drugs Ordinance, 1952 and tried before a judge and jury. The jury unanimously returned a verdict of not guilty and the respondents were acquitted. The Public Prosecutor then appealed against the acquittal.

Held: (1) the Federal Court had jurisdiction to entertain the appeal;

(2) the verdict in this case depended entirely on the weight to be given to the conflicting versions from the evidence and as there was nothing wrong in the summing-up, the appeal should be dismissed.

Public Prosecutor v. *Tai Chai Geok*[1] considered no longer good law.

Cases referred to:-

(1) *Public Prosecutor* v. *Tai Chai Geok* [1978] 1 M.L.J. 166.

(2) *Bombay Government* v. *Abdul Wahab* A.I.R. 1946 Bom. 38.

(3) *Ramanugrah Singh* v. *King-Emperor* 73 I.A. 174.

(4) *Muthusamy* v. *Public Prosecutor* [1948] M.L.J. 57.

The following cases were also cited in argument: *R.* v. *Reynolds* [1950] 1 K.B. 606, 608; *Jusoh bin Awang* v. *Public Prosecutor* [1950] M.L.J. 69; *Mahadi* v. *Public Prosecutor* [1970] 1 M.L.J. 16, 17; *Joseph Tan Han Seng* v. *Public Prosecutor* [1977] 2 M.L.J. 66.

FEDERAL COURT.

Mohammed Nor bin Haji Ahmad (Deputy Public Prosecutor) for the appellant.

R. Rajasingam for the first respondent.

R.C. Murugeson for the second respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court) (read by Gill C.J. (Malaya)): The two respondents were jointly charged as follows:

"That you at about 6.45 p.m. on 22nd May, 1975 at Kheng Chew Temple, Muntri Street, Penang, in the District of Georgetown, in the State of Penang, together with another person still at large in furtherance of the common intention of you all, did, on your own behalf traffic in a dangerous drug, to wit, heroin weighing 2,863.127 grammes and you thereby committed an offence punishable under sub-section (2) of section 39B of the Dangerous Drugs Ordinance No. 30 of 1952 read with section 34 of the Penal Code."

The jury unanimously returned a verdict of not guilty and in accordance with section 229 of the Criminal Procedure Code the learned trial judge had